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Mary Cottrell, Secretary

Department of Telecommunications and Energy

One South Station

Boston, Mass. 02202

RE: Applications to increase price of Standard Offer (DTE 00-66, Fitchburg G&E; DTE 00-67, Massachusetts Electric; DTE 00-70, NStar companies)

Dear Secretary Cottrell:

This is the Comment in opposition to the above-captioned applications by Action, Inc.; the Massachusetts Energy Directors Association; and Massachusetts Community Action Program Directors Association, Inc. (MASSCAP), on behalf of themselves as administrators of the fuel assistance program for low-income customers of the above-captioned utilities, and on behalf of the low-income customers they serve.

I. Summary.

The basis of this opposition is that the proposed increases fail to preserve the economic value of the electricity price provisions established by statute. In addition, the proposed increases violate the statutory requirement to provide low-income discounts comparable to those in effect prior to March 1, 1998. Finally, the Department has failed to provide

safeguards required by law, such as discovery, hearings, and the right of cross-examination.

Restructuring is not working to hold down wholesale electricity prices, for two unexpected reasons:

(1) Fuel prices have risen sharply, and

(2) Wholesale electricity prices have risen even more sharply than can be explained by fuel price increases.

The utilities seek to raise rates to cover wholesale electricity price increases that leaped 158% in the first year of the marketplace operated by the New England Independent System Operator (ISO-NE) (May 1999 through May 2000). Wholesale electricity prices have subsided to the still-lofty level of a 53% increase from May 1999 to September 2000. In May, the price of all kilowatthours sold for a four-hour period hit \$6 per kWh, compared to normal prices of three or four cents or less.⁽¹⁾ These increases cannot be accounted for by fuel prices alone. While oil prices for utility generation have indeed risen 119%, and gas prices by 49%,⁽²⁾ oil and gas only account for about a third of utility kWh.⁽³⁾ The balance of utility kWh are produced from the fuels of coal, nuclear, and renewables, the prices of which have barely budged.⁽⁴⁾ Blending all fuels, as utilities do, would thus result in wholesale electricity prices of 22%, substantial but less than half the 53% increase experienced. The difference must be due to market failure.

Thus the issue to be determined is only partly the pass-through of fuel price increases. It is also the question of how to deal with substantial unexpected market imperfections that have caused substantial increases in wholesale electricity prices. A basic premise of restructuring has been that all stakeholders would share in the benefits and the risks of the new structure, and that there would be a seven-year transition to the risks of the marketplace for utility customers. However, the applicants' proposals would shift all of the risks of the wholesale marketplace to utility customers right away.

Among the mitigation measures that should be investigated are utility purchasing practices and deferrals. The evidence filed to date in these dockets indicates that utilities are heavily reliant on short-term purchases, which may not be as effective in controlling prices as would be long-term contracts and other hedging activities. Further, deferrals along the lines of those anticipated at the time of restructuring would only add about 2 mills to prices in later years, when the expectation is that marketplace competition will have reduced prices by more than that.

Furthermore, low-income rates fail to incorporate statutory discounts. The utilities propose to increase residential rates by as much as 13%, an amount that is not supported by fuel price increases. However, they propose to increase low-income rates by even more, as much as 17%, with no discount on the proposed increase in energy rates. This is prohibited by the statutory requirement of "discounted rates for low-income customers comparable to the low-income discount rate in effect prior to March 1, 1998."⁽⁵⁾

Finally, the procedure chosen by the Department in these cases has made it impossible to effectively investigate the proposals. The Department prohibited discovery by the parties, held no hearings, and provided no opportunity for cross-examination of applicants' assertions. Furthermore, service by the applicants of its filings and Departmental information responses has been incomplete.

For all these reasons, these applications should be set for hearings as general rate cases, in accordance with statute, with full opportunities for discovery and cross-examination. Among the issues that should be set for hearing are application of the statutory low-income discount, such other measures as may be required to assure universal service, utility purchasing practices, and deferrals of wholesale cost increases not caused by fuel price increases.

III. Applicable Statute.

In reviewing application of the inflation cap, as under consideration here, the department must "require that, the economic value of the [15%] rate reduction required under this section, be maintained during the standard service transition period."⁽⁶⁾ In doing so, the department exercises its power of "general supervision of all gas and electric companies and shall make all necessary examination and inquiries and keep itself informed."⁽⁷⁾ This includes the requirement that, "Whenever the department receives notice of any changes proposed to be made in any schedule filed under this chapter which represent a general increase in rates, it shall ... thereafter hold a public hearing and make an investigation as to the propriety of such proposed changes ..."⁽⁸⁾

Furthermore, in implementing the restructuring act's provisions regarding the 15% rate reduction, default service, and standard offer service, "the department shall ensure universal service for all ratepayers and sufficient funding to meet the need therefore."⁽⁹⁾ Among other things, "The department shall require that distribution companies provide discounted rates for low income customers comparable to the low-income discount rate in effect prior to March 1, 1998."⁽¹⁰⁾

Thus the Department has the statutory obligation to hold hearings to consider all applications for a general increase in rates, such as the instant applications to increase all rates to account for both fuel increases and wholesale market failures and to thus change the statutory allocation of marketplace risk during the standard offer transition period. In such a proceeding, the Department is obliged to, among other things:

safeguard the economic value of the rate reduction provided by statute,

maintain the low-income discount in effect on March 1, 1998, and

ensure universal service and funding therefor.

V. The applicants' proposals fail to maintain the economic value of the General Court's 15% rate reduction.

A. The proposed increases are based on more than fuel price increases.

Oil and gas prices have indeed risen sharply since the beginning of 1999. But, for example, coal, nuclear, and renewable prices are essentially fixed and represent about two-thirds of the fuel used to produce electricity for Massachusetts Electric customers. Thus the weighted average fuel price increase at Massachusetts Electric is about 22%, far less than the 53% increase in wholesale electricity rates.

Since, on average, fuel is only about 16% of all utility revenues,⁽¹¹⁾ a 22% fuel price increase should translate to an overall rate increase of 3%. In contrast, Massachusetts Electric has applied for an increase of 13% to R-1 residential customers and 17% to R-2 low-income customers.

Fuel	YTD 2000	1999	change	MECo SO mix	wt'd avg price change	price chg @16% fuel
oil	393.9	182.5	116%	8%	9%	
gas	371.6	250.2	49%	24%	12%	
coal	150.5	147.3	2%	44%	1%	
nuclear			0	11%	0%	
other			0	13%	0%	
Totals				100%	22%	3%

Source	(1)	(1)	(2)	(3)
	(1)	EIA, average cost delivered to electric utilities in U.S. NPCC region [NY, NEng];		
		cents per MMBTU (fossil fuels)		
	(2)	MECo mix: Standard Offer disclosure label, 6/00		
	(3)	EIA, Fuel as fraction of Electric Utility Operating Revenues, Major U.S. IOUs		
		(1992-1996, pre-restructuring)		

Thus, both the extreme increases in New England wholesale electricity prices, and the instant retail applications, are based on substantially more than fuel pass-throughs. A four-hour wholesale price of \$6.00 per kWh is based on what-the-market-will-bear economics, not the price of oil. The only plausible explanation for the wholesale hikes is market failure and a failure by ISO-NE, and the Federal Energy Regulatory Commission (FERC) that regulates ISO-NE, to create a competitive wholesale market in the wake of state restructuring. The instant applications are thus more than simple fuel pass-through applications.

B. The risks of market failure should be shared during the transition period.

The underlying principle of the standard offer transition period of the restructuring act is that utility customers, especially residential customers, should be given a transition period to acclimate to the marketplace and to give the marketplace the time to operate competitively in order to control prices. The expectation is that by the time residential customers must turn to the marketplace, the marketplace will have something to offer that improves upon the regulated rates of yore. In the meanwhile, utilities were expected to sell kWh at a loss, deferring the loss - with full recovery of interest - to the time when rates are expected to be low enough to absorb repayment of the deferral.

The applicants effectively propose to altogether do away with the statutory transition period, and its deferrals, and make retail standard offer prices float with the market until the need for deferrals is ended either by a scheduled increase in standard offer price or a drop in wholesale prices. While there may be case to be made for passing through unanticipated increases in fuel prices, applicants reach much further than that and seek immediate pass-through of wholesale market failures. This was not the plan or the agreement.

Instead, this unanticipated event should be treated as a transition issue and deferred until after stranded costs are paid and wholesale rates have (presumably) become competitive. At that time, the deferrals can be repaid without burden to customers. Utilities are kept

financially whole by payment of interest. The utilities - as was determined when the restructuring act was enacted - are far better able to handle what, for them, is merely a financial transaction with no loss. It would be unfair, unjust, and unreasonable to hold utilities totally free from transition marketplace issues, as they propose, while putting the entire burden on ratepayers.

C. Utilities have failed to mitigate the harm to ratepayers of market failures.

Utilities are far better equipped to deal with wholesale electricity markets than are its customers - indeed, utilities have been doing so for more than a century. That is the reason utilities were, in effect, appointed as purchasing agents for customers via standard offer transition service and default service. Yet the applicants have presented no evidence of long-term purchasing or other hedging activities carried out on customers' behalf.

Indeed, for example, ⁽¹²⁾ Boston Edison's short-term purchases for standard offer service represent about 47% of all kWh in 1999 and 42% in 2000, ⁽¹³⁾

although short-term kWh are about 20% more costly. ⁽¹⁴⁾

This suggests the need for a Department investigation of purchasing practices to determine whether there are practices utilities could, and should, employ to dampen wholesale market fluctuations and their detrimental impact on customers.

Deferrals, anticipated in the restructuring act, are another mitigation measure that bear investigation. For example, the deferral payment required at Massachusetts Electric would be only 2 mills per kWh. ⁽¹⁵⁾ Thus a substantial benefit could be conferred now - amelioration of rate shock and smoothing the transition to a competitive marketplace - at a very small price to later consumers and no financial cost whatsoever to the utilities. If it is anticipated that wholesale markets will develop sufficiently to lower future prices sufficiently to reward the current investment in risk, then deferral represents an equitable allocation of risks and rewards across customer generations. Today's customers are taking substantial risks so that future customers may reap the anticipated benefits of a competitive marketplace. For today's customers to also be required to carry burdens of price volatility due to temporary market failure so that future customers may reap the benefits of a competitive marketplace would be an unjust inter-generational cross-subsidy.

If, on the other hand, reduced prices are not anticipated, then substantial further investigation is required to protect current and future consumers from failures of the marketplace.

VI. Low-income discounts are required by statute.

The department is required to ensure funding of universal service, including by requiring maintenance of low-income discounts comparable to those in place at the enactment of restructuring. These discounts were originally Department-set percentages of the low-income customer's bill and have been maintained by keeping the percentage of the total bill but applying the resulting dollar amounts of discount solely to the distribution rate. However, in the instant applications, the applicants propose to increase total bills without making any adjustment to the discounts. This violates sec. 1F(4)(i).

The perverse results of the applicants' proposals would be low-income rate increases that are 30%-36% larger than those for other residential customers:

	Standard Offer			R-1 (residential)			R-2 (low-income)		
	Current proposed increase			Current	proposed	increase	current	proposed	increase
BEC _o	4.500	5.081	13%	\$63.44	\$66.43	4.7%	\$36.60	\$38.95	6.4%
				515 kWh (avg)			405 kWh (avg)		
MEC _o	3.800	4.994	31%	\$69.91	\$78.87	12.8%	\$42.81	\$49.97	16.7%
				750 kWh			600 kWh		
FG&E	3.800	4.346	14%	\$85.15	\$89.24	4.8%	\$43.41	\$46.14	6.3%
				750kWh			500 kWh		

VII. Department procedures thus far are fatally flawed.

The Department's rush to judgement in these dockets is so rapid that there has not even been time to serve all responses to the Department's limited questions. Indeed, one large package of responses, from Massachusetts Electric, arrived yesterday - on a state and federal holiday that, coincidentally, was also the most important holiday on the Jewish calendar. Contrary to Department notices (also not served), filings have not been entirely available on the Department's web site and most of the information responses have not appeared there at all. Furthermore, the applicants have been haphazard about service. This party, for example, has (despite requests for it and inclusion on the published service list) never received a complete copy of NStar's filing nor complete copies of information responses from Massachusetts Electric or Fitchburg G&E.

The need for electronic speed has been caused by the Department's unrealistically and unlawfully short schedule. This schedule has provided for no party discovery, no hearings, and no cross-examination, despite the statutory requirement for hearings on any proposed general rate increase. The applications propose increases up to 17% to every customer class, almost the definition of a general rate case. Furthermore, the applications propose a fundamental reordering of the statutory assignment of marketplace risks during the transition period.

VIII. Conclusion.

Wherefore, for all these reasons, Action, Inc.; the Massachusetts Energy Directors Association; and Massachusetts Community Action Program Directors Association, Inc. (MASSCAP) urge the Department to assign these applications for hearing as applications for general rate increases, in accordance with statute, with full opportunities for discovery and cross-examination. Among the issues that should be set for hearing are application of the statutory low-income discount, such other measures as may be required to assure universal service, utility purchasing practices, and deferrals of wholesale cost increases not caused by fuel price increases.

Respectfully submitted,

Action, Inc.; the Massachusetts Energy Directors Association; and Massachusetts Community Action Program Directors Association, Inc. (MASSCAP), by their attorney,

cc:

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1.

¹ ISO New England.

2.

² U.S. Energy Information Administration.

3.

³ E.g., Massachusetts Electric Disclosure Label, June 2000.

4.

⁴ Coal prices, for example, have risen 2%. U.S. Energy Information Administration. Nuclear and renewable costs are largely fixed.

5.

⁵ G.L. c. 164, sec. 1F(4)(i).

6.

⁶ G.L. c. 164, sec. 1B(e).

7.

⁷ G.L. c. 164, sec. 76.

8.

⁸ G.L. c. 164, sec. 94.

9.

⁹ G.L. c. 164, sec. 1B(d).

10.

¹⁰ G.L c. 164, sec, 1F(4)(i).

11.

¹¹ U.S. Energy Information Administration, fuel as fraction of major U.S. IOU electric utility operating revenue, 1992-1996 (pre-restructuring). The range in this period is 14.1% to 16.0%.

12.

¹² The example is taken from NStar because it provided by far the most data in response to questions from the Department. We in no way mean to negatively single out NStar in this section and, in fact, thank NStar for the documentation it provided that the others did not. We believe the NStar data provided represent data typical of the industry in the Commonwealth.

13.

¹³ Att. 1R-DTE-1-1BEC at 5, 7, 9, 11 in DTE-00-70.

14.

¹⁴ DTE-AG-1-8, DTE-DOER-2-2 in DTE-00-70.

15.

¹⁵ Assumes Mass. Electric accounting of undercollection at Sept. 20, 2001 with no change in Standard Offer price, Mass. Electric statement of interest required (5.43%), Mass. Electric statement of kWh sales, plus 3% per year growth, five year deferral followed by seven year payback. Of course, there is an infinite variety of alternative deferral methods that would have similarly positive impacts on consumers while leaving the utility financially whole. See DTE-2 at 2; DT4-DOER-4 at att. P. 1 in DTE-00-67.